

IOWA DEPARTMENT OF INSPECTIONS AND  
APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**LORI L. ANDREANO**  
**2618 E. GRAND AVENUE**  
**DES MOINES, IA 50317**

**IOWA WORKFORCE DEVELOPMENT**  
**JON NELSON**

JONI BENSON, IWD  
TERESA HILLARY, IWD  
JON NELSON, IWD

**Appeal Number: 14IWDUI176-177**  
**OC: 04/13/14**  
**Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>TH</sup> Floor Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

July 30, 2014

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(Decision Dated & Mailed)

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Iowa Code section 96.4(3) – Able and Available  
Iowa Code section 96.5(1) – Voluntary Quit; Left Work Without Good Cause

**STATEMENT OF THE CASE**

These consolidated appeals include two decisions issued by Iowa Workforce Development, on May 14, 2014 and June 5, 2014, relating to Lori Andreano's prior employment with Iowa Workforce Development and her unemployment insurance benefits claim. The decisions and appeals will be listed in chronological order.

Iowa Workforce Development (IWD) issued a decision dated May 14, 2014, reference 01. IWD determined that Lori Andreano was ineligible for unemployment insurance benefits because she voluntarily quit work on April 11, 2014, because of a work-related medical condition. The appeal deadline for this decision was May 24, 2014. Lori Andreano submitted an appeal letter, dated May 19, 2014. The IWD Appeals Section received this appeal on June 4, 2014. It appears that this appeal was not timely filed.

Iowa Workforce Development (IWD) issued a decision dated June 5, 2014, reference 02. IWD determined that Lori Andreano was ineligible for unemployment insurance benefits, because she was unable to perform work, according to her physician, and was therefore unavailable for work. The appeal deadline for this decision was June 15, 2014. The appeal file does not include a separate appeal form or letter for this decision.

IWD transmitted both of these cases to the Department of Inspections and Appeals (DIA) to schedule a contested case hearing. The date this transmittal occurred was not listed. When IWD transmitted the case, it mailed a copy of the administrative file to Lori Andreano and provided a copy to the IWD representative, Jon Nelson. DIA received the transmittals on June 18, 2014.

A notice of telephone hearing was issued on June 24, 2014, scheduling a contested case hearing for both of these cases on July 25, 2014, at 1:00 p.m., before Administrative Law Judge Emily Gould Chafa. The Claimant, Lori Andreano, repeated her request that the hearing be held in-person. An in-person hearing was ordered and held on July 25, 2014, at 1:00 pm in a DIA Administrative Hearings Division hearing room at the Wallace State Office Building. Lori Andreano appeared and testified during the hearing. The IWD representative, Jon Nelson, appeared and testified. The appeal files for both of these cases, numbered as Exhibits 1 through 16, were admitted into the record without objection.

### **ISSUES**

1. Whether IWD correctly determined the Claimant is ineligible to receive unemployment benefits.
2. Whether IWD's disqualification of an individual's benefits due to voluntary quitting without good cause was proper.

### **FINDINGS OF FACT**

The relevant facts are mostly undisputed. Lori Andreano was employed with Iowa Workforce Development (IWD) as a clerk specialist from March 22, 2010 until April 11, 2014. She first worked in IWD's trade program, and then accepted a contract transfer to IWD's fraud and investigations unit. (Nelson testimony)

Ms. Andreano began to experience physical health issues two years ago. She utilized FMLA (Family Medical Leave Act) leave. After this FMLA leave was exhausted, she requested and received 90 more days of medical leave without pay. The last day that Lori Andreano worked for IWD was in December 2013. (Nelson testimony; Andreano testimony)

Ms. Andreano requested an additional 90 days of medical leave without pay. This second request was denied. (Nelson testimony; Andreano testimony; Exhibit 8)

Lori Andreano was unable to return to work, due to a medical condition. Her doctor apparently indicated that she was not able to return to work. (Nelson testimony; Andreano testimony; Exhibit 8)

In a letter dated April 11, 2014, David Eklund, Ms. Andreano's supervisor, notified her that she would be removed from IWD's payroll as of that date. (Exhibit 8) This letter also stated that Ms. Andreano "indicated that [she] was not able to return to work per [her] physician." (Exhibit 8) This letter also mentioned that IWD was processing her request for long term disability benefits. (Exhibit 8)

IWD considered its needs and denied Ms. Andreano's request for the additional 90 day leave. IWD needed to fill her position. IWD needed an employee who could perform the important duties of this position. Other IWD employees in the fraud and investigation unit rely on the clerk specialist to perform her work duties. (Nelson testimony)

Ms. Andreano stated that she was unable to return to work at IWD. She agreed that she was not able and available to work. (Andreano testimony) She did not agree with the notice of decision stating that she voluntarily quit. (Andreano testimony)

Lori Andreano filed a claim for unemployment insurance (UI) benefits on April 13, 2014. (Exhibits 5, 11)

IWD issued a Notice of Decision on May 14, 2014, notifying Lori Andreano that she was not eligible to receive unemployment insurance benefits. (Exhibit 11, 7) This Notice of Decision included this language to explain the decision: "Our records indicate you voluntarily quit work on 04/11/14, because of a work-related medical condition. You have failed to meet one or more of the following requirements: 1) You had competent medical evidence that you were required to leave your employment; 2) Before quitting you informed the employer of the problem, and that you intended to quit; and 3) You did not refuse an offer of accommodations or comparable work." (Exhibit 11, 7)

The appeal deadline from this decision was May 24, 2014. (Exhibit 11, 7) This Notice of Decision included this language: "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 05/24/14, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT WORKING DAY." (Exhibit 11, 7).

Lori Andreano submitted an appeal letter, with a handwritten date of May 19, 2014. (Exhibit 6) The IWD Appeals Section received this appeal on June 4, 2014. (Exhibit 6) The appeal file includes a set of documents which were stapled together. (Exhibits 6, 7, 8, 9, 10) The stapled documents consist of Lori Andreano's appeal letter, a copy of the Notice of Decision dated 05/14/14, the original letter from David Eklund to Lori Andreano dated April 11, 2014, a copy of the same letter sent via email, printed out on 5/16/2014, and an envelope with a return address of Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209, addressed to Iowa Workforce Development, Quality Control Bureau, Juli Putzir, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209, stamped "RECEIVED CUSTOMER SERVICE MAY 27, 2014 IOWA WORKFORCE DEVELOPMENT" (Exhibits 6, 7, 8, 9, 10) Apparently, Ms. Andreano's appeal packet was not delivered to the IWD Appeals Section from IWD's customer service desk for seven days. (Exhibits 6, 10)

The appeal deadline for this decision was May 24, 2014, a Saturday. The following Monday, May 26, was Memorial Day, a legal holiday. Therefore, the appeal deadline was extended to the next working day, May 27, 2014. (Exhibit 11, 7) This appeal was not postmarked. Lori Andreano testified that she wrote the date on her appeal letter. She testified that she hand-delivered it to the front desk at the IWD building at 1000 East Grand. She did not address her appeal to the IWD Appeals Section as required. The IWD Appeals Section did not receive the appeal until June 4, 2014, more than a week past the deadline. (Exhibit 6)

On June 5, 2014, IWD issued a decision, determining that Lori Andreano was not eligible for unemployment benefits because she is not able and available to work. (Exhibit 15) The appeal deadline for this decision was June 15, 2014. (Exhibit 15) This Notice of Decision included this language: "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 06/15/14, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 15).

The appeal deadline for this decision was June 15, 2014. The appeal files do not contain any document to indicate that Lori Andreano appealed this overpayment decision. During the hearing, she agreed that she was unable to work. She agreed with this decision. (Andreano testimony)

The undisputed credible evidence shows that Lori Andreano was unable to return to work. Her last day of work was December 23, 2013. She exhausted her FMLA leave. She requested and received 90 more days of unpaid medical leave. Her request for another additional 90 days of unpaid medical leave was denied. Her doctor indicated that she could not return to work. She agreed that she was unable to return to work. (Andreano testimony; Nelson testimony; Exhibit 8)

## **REASONING AND CONCLUSIONS OF LAW**

### **I. No Entitlement to Benefits – Able and Available**

The undisputed evidence clearly shows that Lori Andreano was not able and available for work because of her medical condition. Because Lori Andreano was not able and available for work, she was not entitled to receive any unemployment benefits.<sup>1</sup>

### **II. No Entitlement to Benefits – Voluntary Quit**

The undisputed evidence clearly shows that Lori Andreano did not work after December 23, 2013. She used and exhausted her FMLA leave. She requested and received 90 more days of unpaid medical leave. Her request for an additional 90 days of unpaid medical leave was denied. She applied for long term disability benefits with IWD.

The evidence shows that Lori Andreano stopped working in her job at IWD because of her medical condition. She claimed that her medical condition was aggravated by her work environment. IWD did not rebut this assertion. Ms. Andreano's doctor indicated

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<sup>1</sup> Iowa Code §96.4(3); 871 Iowa Administrative Code (IAC) 24.22; 871 IAC 24.23(1); 871 IAC 24.23(6); 871 IAC 24.23(35).

that she could not return to work. While she continued to work for IWD, before December of 2013, Ms. Andreano received a reasonable accommodation which allowed her to work 6 ½ hours per day. After December 23, 2013, she was not able and available for work, with or without any accommodation. Considering all the evidence presented, I conclude that she was not entitled to receive unemployment benefits.<sup>2</sup>

### **Timeliness of Appeals**

Iowa Code §96.6(2) requires a claimant to file an appeal of IWD's decision "within ten calendar days after notification was mailed to the claimant's last known address." The applicable administrative rules require that the appeal be filed, by mail, facsimile or in person, with the Appeals Section of IWD.<sup>3</sup> The rules state that the appeal must be addressed or delivered to the IWD Appeals Section at 1000 East Grand Avenue, Des Moines, Iowa.<sup>4</sup> The Iowa Supreme Court has determined that a timely appeal is both mandatory and jurisdictional.<sup>5</sup> The IWD decision to pay or deny benefits becomes final unless a timely appeal is properly filed.<sup>6</sup>

These administrative appeal files include two decisions. The evidence clearly shows that Lori Andreano did not file an appeal from the second decision, dated 06/05/14, denying unemployment insurance benefits as of 04/13/14, because she was not able and available to work. She testified that she was not able to return to work as of December 23, 2013. She testified that she agreed with this decision. (Exhibit 15, Andreano testimony) This decision is final.<sup>7</sup>

In the decision dated May 14, 2014, IWD disqualified Lori Andreano from eligibility for unemployment insurance benefits because she voluntarily quit due to a work-related medical condition. (Exhibit 11, 7) The appeal deadline for this decision was actually May 27, 2014, due to the weekend and holiday. (Exhibit 11, 7) An envelope which appeared to contain Lori Andreano's appeal letter was stamped as received by IWD's customer service desk on May 27, 2014. (Exhibit 10) Lori Andreano testified that she wrote the date on her appeal letter, May 19, 2014, and hand-delivered it to the IWD front desk. She didn't know why it was placed in an envelope addressed to IWD's quality control bureau. (Exhibit 10; Andreano testimony) The IWD Appeals Section did not receive it until June 4, 2014, more than a week later. (Exhibit 6) Lori Andreano did not explain why she did not address and deliver her appeal directly to the IWD Appeals Section. She did not explain why she hand-delivered her appeal, which was dated May 19, 2014, to the IWD customer service desk on May 27, 2014, more than a week later. (Andreano testimony) Considering this unusual pattern of events, I reluctantly conclude that Lori Andreano's appeal was timely filed with IWD for the decision dated May 14, 2014. (Exhibits 6-10, 11) The envelope which presumably contained her appeal was stamped as received by an IWD customer service representative on May 27, 2014, the appeal deadline date. (Exhibit 10)

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<sup>2</sup> Iowa Code §96.5(1); 871 IAC 24.26(6)(b).

<sup>3</sup> 871 IAC 26.4(1)

<sup>4</sup> 871 IAC 26.4(1)

<sup>5</sup> *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

<sup>6</sup> Iowa Code §96.6(2)

<sup>7</sup> Iowa Code §96.6(2)

**DECISION**

IWD's decision dated May 14, 2014, reference 01, determining that Lori Andreano was ineligible for benefits because she voluntarily quit work on April 11, 2014, is AFFIRMED.

IWD's decision dated June 5, 2014, reference 02, determining that Lori Andreano was ineligible for benefits because she was not able and available for work is AFFIRMED.  
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